

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES C. BRYANT
Claimant

VS.

**TAP ENTERPRISES, INC. d/b/a
CUMMINS INDUSTRIAL TOOLS**
Self-Insured Respondent

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Docket No. 1,017,743

ORDER

Respondent appealed the January 12, 2005 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This claim is before the Board for the second time. An initial preliminary hearing Order was entered by Special Administrative Law Judge Marvin Applying on September 30, 2004. Respondent appealed that Order to the Board contesting whether claimant had sustained personal injury by accident arising out of and in the course of his employment with respondent. By its Order dated February 7, 2005, the Board affirmed the September 30, 2004 Order.

The present appeal arises from a January 11, 2005 preliminary hearing in which claimant requested Judge Barnes to increase the temporary total disability rate. The parties agreed the correct temporary total disability rate was \$384.45 per week. Nonetheless, respondent announced it continued to challenge the compensability of the claim. In the January 12, 2005 Order, Judge Barnes ordered the payment of temporary total disability benefits at the correct rate. But the Judge did not address the compensability issue as an appeal of the first preliminary hearing Order was pending before the Board and no additional evidence was presented addressing that issue.

Respondent contends Judge Barnes erred in awarding claimant temporary total disability benefits as it disputes that claimant injured himself while working for respondent. Accordingly, respondent requests the Board to deny claimant's request for workers compensation benefits. Conversely, claimant contends this claim is compensable and, therefore, the January 12, 2005 Order should be affirmed.

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the January 12, 2005 preliminary hearing Order should be affirmed. The issue whether claimant sustained personal injury by accident was determined in the Board's February 7, 2005 Order. No new evidence was presented regarding the compensability issue at the January 11, 2005 preliminary hearing. Accordingly, there is no compelling reason to modify the Board's February 7, 2005 decision, which found that claimant injured himself while working for respondent.

During the preliminary hearing claimant was asked about the apparent inconsistent statements and medical histories contained in the various medical records. Claimant's explanation was plausible and credible. The Appeals Board finds claimant has met his burden of proving that he suffered personal injury by accident arising out of and in the course of his employment on the date alleged and that his current back problems are attributable to that work-related accident.¹

WHEREFORE, the Board affirms the January 12, 2005 Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of February 2005.

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
John David Jurcyk, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ *Bryant v. Tap Enterprises, Inc. d/b/a Cummins Industrial Tools*, No. 1,017,743 (Kan. WCAB Feb. 7, 2005).